

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

DON GARFIELD GALLOWAY,

Petitioner,

v.

CIVIL ACTION NO. 5:17-cv-00993

DONNIE AMES, *Superintendent,
Mount Olive Correctional Complex,*

Respondent.

MEMORANDUM OPINION AND ORDER

On January 27, 2017, the Petitioner filed his *Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody* (Document 1). On March 30, 2018, *The Warden's Motion to Dismiss Without Prejudice or for Stay Due to Petitioner's Failure to Exhaust His State Remedies* (Document 7) was filed. On May 11, 2018, the Petitioner's *Motion for Stay and Abeyance* (Document 10) was filed.

By *Standing Order* (Document 3) entered on January 30, 2017, this action was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On December 11, 2018, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 13) wherein it is recommended that: 1) *The Warden's Motion to Dismiss Without Prejudice or for Stay Due to Petitioner's Failure to Exhaust His State Remedies* (Document 7) be granted in part and denied in part; 2) the Petitioner's *Motion for Stay and Abeyance* (Document

10) be granted; 3) the Petitioner's *Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody* (Document 1) be held in abeyance pending the exhaustion of the Petitioner's available state court remedies; 4) the case be transferred to the inactive docket pending further order of the Court; and 5) the Petitioner shall notify the Court and the Respondent within fourteen (14) days of the resolution of any additional state habeas proceedings, or the result thereof, and of his intent to proceed with this matter.

Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by December 31, 2018, and none were filed by either party. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** as follows:

- 1) *The Warden's Motion to Dismiss Without Prejudice or for Stay Due to Petitioner's Failure to Exhaust His State Remedies* (Document 7) is **GRANTED IN PART AND DENIED IN PART**; the motion is **GRANTED** to the extent that it seeks a stay of the proceedings, and is **DENIED** to the extent that it seeks dismissal of the *Petition*;
- 2) The Petitioner's *Motion for Stay and Abeyance* (Document 10) is **GRANTED**;
- 3) The Petitioner's *Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody* (Document 1) is **HELD IN ABEYANCE** pending the exhaustion of the Petitioner's available state court remedies;

- 4) This case shall be **TRANSFERRED TO THE INACTIVE DOCKET** by the Clerk pending further order of the Court; and
- 5) The Petitioner shall notify the Court and the Respondent within fourteen (14) days of the resolution of any additional state habeas proceedings, or the result thereof, and of his intent to proceed with this matter.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Tinsley, counsel of record, and any unrepresented party.

ENTER: January 3, 2019



IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA